SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 180

NORMAN SEE, APPELLANT,

vs.

CITY OF SEATTLE.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., OCTOBER 17, 1966

[fol. A] [File endorsement omitted]

[fol. 1]

IN THE
SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

No. 38779

CITY OF SEATTLE, Plaintiff,

—VS.—

NORMAN E. SEE, Defendant.

AGREED STATEMENT OF FACTS—Filed June 18, 1964

Comes Now the appellant, defendant in the above entitled action, and, through his counsel, submits the following Statements of Facts:

I.

That at all times mentioned herein, the defendant was and is the owner of certain premises at 1549 N. W. 49th Street, Seattle, King County, Washington, upon which there is located a warehouse building which premises were and are maintained as locked premises by defendant, and inaccessible to anyone except the defendant.

II.

That on or about the 14th day of February, 1963, the City of Seattle Fire Department, through its authorized representative, demanded of the defendant that an inspection be allowed as to the said locked premises; that the said Fire Department did not procure a search warrant nor present such to defendant. That no claim was made that the said Fire Department had any reasonable cause to believe a violation of the ordinance existed at the time

of the said demand. That the defendant, on said date, refused to allow the said Fire Department to make such inspection.

III.

That on the 27th day of February, 1963, a warrant was issued for the arrest of the defendant for violation of City [fol. 2] of Seattle Ordinance No. 87870, Section 8.01.050. That the cause proceeded to trial on the 15th day of March, 1963, upon a plea of not guilty, in Municipal Court, before Judge Walter T. McGovern, and that defendant was adjudged guilty, appeal bond set at $100.00, which was paid, and appeal taken to Superior Court.

IV.

That the cause came on for trial in the above entitled Superior Court on the 10th day of March, 1964, before the Honorable Henry W. Cramer, Judge of the above Superior Court. Jury trial was waived and the matter heard on stipulated facts in accordance with the foregoing statement of facts, and in addition, an uncertified copy of Sections 8.01.010 through 8.01.140, was admitted into evidence as a true copy of the provisions in force at the times mentioned herein in accordance with stipulation of both counsel. A true copy of such is attached hereto as Exhibit No. 1.

Counsel for appellant submitted argument on three points, which are also the points relied upon by appellant in this appeal, and are as follows:

1. That Section 8.01.050 does not specifically by its terms give authority to the Fire Chief or his representative to enter all buildings and premises without any showing of reasonable or probable cause.

2. That if Section 8.01.050 does, in fact, when read with the rest of the ordinance provisions, grant such authority to the Fire Chief or his representative to enter a locked building, such as appellant's warehouse, with-

out a search warrant or a showing of reasonable cause, then it is appellant's claim that such ordinance is unconstitutional as authorizing unreasonable search, and in violation of Amendment IV, United States [fol. 3] Constitution, and Article I, Section 7, State of Washington Constitution.

3. That said Section 8.01.050 and Section 8.01.040 of said ordinance further violates the privileges and immunity clauses found in Amendment XIV, United States Constitution and Article I, Section 12, State of Washington Constitution.

V.

Plaintiff counsel, on behalf of the City of Seattle, submitted argument in support of said ordinance, and the Court thereupon entered findings of fact in accordance with the above statement of facts and the conclusion of law that the defendant be adjudged in violation of said ordinance, Section 8.01.050, for refusal to allow inspection of his said premises. Finding of Fact, Conclusions of Law and Judgment were entered the 24th day of March 1964, by the Court. A true copy of said Judgment, marked Exhibit No. 2, is attached hereto. That appellant caused notice of appeal from said judgment to be served and filed on the 13th day of April, 1964. A copy of said Notice of Appeal, marked Exhibit No. 3, is attached hereto.

Submitted this 18th day of June, 1964.

Abbott & Curtis, Attorneys for Appellant, By Andrew Curtis, Jr.

The above Statement of Facts is hereby acknowledged to be an Agreed Statement of Facts this 18th day of June, 1964.

A. L. Neubold, Corporation Counsel for the City of Seattle, By William L. Parker, Assistant Corporation Counsel.

[fol. 4]

EXHIBIT 1 TO AGREED STATEMENT OF FACTS

CHAPTER 8.01.

GENERAL PROVISIONS

SECTIONS:

8.01.010 Intent.

8.01.020 Powers and duties of the fire chief.

8.01.030 Application to new and existing conditions.

8.01.040 Authority to enter premises.

8.01.050 Inspection of buildings and premises.

8.01.060 Orders to eliminate dangerous or hazardous conditions.

8.01.070 Service of orders.

8.01.080 Permits.

8.01.090 Revocation of permit.

8.01.100 Fire drills in schools and institutional occupancies.

8.01.110 Fire prevention advisory board.

8.01.120 Definitions.

8.01.130 Repealer.

8.01.140 Penalty.

8.01.010 INTENT. This Title, referred to as the Fire Code, prescribes minimum standards for the safeguarding of life and property from the hazards of fire and explosion arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the use or occupancy of buildings or premises. Hazards which are governed by specific reference shall also be subject to all other applicable pro-

visions of this Title. (Ord. 87870 § 8.01.010; January 19, 1959).

8.01.020 POWERS AND DUTIES OF THE FIRE CHIEF. The Fire Chief is hereby authorized and directed to enforce this Title unless otherwise expressly provided herein or by City Charter. (Ord. 87870 § 8.01.020; January 19, 1959).

8.01.030 APPLICATION TO NEW AND EXISTING CONDITIONS. The provisions of this Title shall apply equally to new and existing conditions; provided, that those existing conditions which the Fire Chief has determined by rule or in writing do not constitute an immediate hazard to life or property may be continued. (Ord. 87870 § 8.01.030; January 19, 1959).

8.01.040. AUTHORITY TO ENTER PREMISES. The Fire Chief shall investigate the cause of every explosion or fire, and may enter any premises, including dwellings, for such purpose, and may enter, investigate and inspect any dwelling when he has reasonable cause to believe a violation of the provisions of this Title exists therein. (Ord. 87870 § 8.01.040 as amended by Ord. 88339; June 29, 1959).

8.01.050 INSPECTION OF BUILDING AND PREMISES. It shall be the duty of the Fire Chief to inspect and he may enter all buildings and premises, except the interiors of dwellings, as often as may be necessary for the purpose of ascer- [fol. 5] taining and causing to be corrected any conditions liable to cause fire, or any violations of the provisions of this Title, and of any other ordinance concerning fire hazards. (Ord. 87870 § 8.01.050; January 19, 1959).

8.01.060 ORDERS TO ELIMINATE DANGEROUS OR HAZARDOUS CONDITIONS. Whenever the Fire Chief finds in any building or upon any premises dangerous or hazardous conditions or materials, he shall order such dangerous conditions or materials to be removed or remedied in such manner as may be specified herein, particularly:

1. Dangerous or unlawful amounts of combustible or explosive or otherwise hazardous materials;
2. Hazardous conditions arising from defective or improperly installed equipment for handling or using combustible or explosive or otherwise hazardous materials;
3. Dangerous accumulations of rubbish, waste paper, boxes, shavings or other highly flammable materials;
4. Accumulations of dust or waste material in air conditioning or ventilating systems or of grease in kitchen or other exhaust ducts;
5. Obstructions to or on fire escapes, stairs, passageways, doors or windows, liable to interfere with the operations of the Fire Department or egress of occupants in case of fire;
6. Any building or other structure which, for want of repairs, lack of sufficient fire escapes or other exit facilities, automatic or other fire alarm apparatus or fire extinguishing equipment, or by reason of age or dilapidated condition, or from any other cause, creates a hazardous condition.

(Ord. 87870 § 8.01.060; January 19, 1959).

8.01.070 SERVICE OF ORDERS. (a) The service of orders for the correction of violations of this Title shall be made upon the owner, occupant or other person responsible for such conditions, either by delivering a copy thereof to such person or by delivering the same to and leaving it with any person in charge of the premises, or in case no such person is found upon the premises, by affixing a copy thereof in a conspicuous place on the door to the entrance of the said premises. Whenever it may be necessary to serve such an order upon the owner of premises, such order may be served either by delivering to and leaving with the said person a copy of the said order, or, if such owner is absent

from the jurisdiction of the officer making the order, by sending such copy by registered mail to the owner's last known post office address.

(b) If buildings or other premises are owned by one person and occupied by another, under lease or otherwise, the orders issued in connection with the enforcing of this Title shall apply to the occupant thereof, except where the [fol. 6] rules or orders erquire the making of additions to or changes in the premises themselves, such as would immediately become real estate and be the property of the owner of the premises; in such cases the rules or orders shall affect the owner and not the occupant unless it is otherwise agreed between the owner and the occupant. (Ord. 87870 § 8.01.070; January 19, 1959).

8.01.080 PERMITS. (a) A permit shall constitute permission to maintain, store or handle materials, or to conduct processes, which produce conditions hazardous to life or property, or to install equipment used in connection with such activities. Such permit does not take the place of any license required by law. It shall not be transferable, and any change in use or occupancy of premises shall require a new permit. A charge shall not be made for such permit or renewal unless expressly stated by ordinance.

(b) Before a permit may be issued, the Fire Chief shall inspect and approve the receptacles, vehicles, buildings, or storage places to be used. In cases where laws or regulations enforceable by departments other than the Fire Department are applicable, joint approval shall be obtained from all departments concerned.

(c) All applications for permit required by this Title shall be made to the Fire Chief in such form and detail as he shall prescribe. Applications for permit shall be accompanied by plans as required by the Fire Chief.

(d) Permits shall at all times be kept on the premises designated therein, and shall at all times be subject to in-

spection by an officer of the Fire or Police Departments. Permits shall be renewed annually upon notice from the Fire Department. (Ord. 87870 § 8.01.080; January 19, 1959).

8.07.090 Revocation of permit. The Fire Chief may revoke a permit or approval issued where a violation of this Title is found upon inspection or there has been any false statement or misrepresentation as to a material fact in the application or plans on which the permit or approval was based. (Ord. 87870 § 8.01.090; January 19, 1959).

8.01.100 Fire drills in schools and institutional occupancies. (a) Fire drills shall be held at least once a month in schools where such occupancies constitute the major occupancy of a building, and at least once every two months in institutional occupancies where such occupancies constitute the major occupancy of a building. During severe weather, fire drills may be postponed. A record of all fire drills shall be kept on the premises subject to inspection of the Fire Chief.

(b) In schools, fire drills include complete evacuation of all persons from the building. In institutional occupancies, fire drills shall be conducted to familiarize operating personnel with their assigned positions of emergency duty; complete evacuation of occupants from the building at the [fol. 7] time of the fire drill shall be required only where it is practicable and does not involve moving or disturbing persons under medical care. (Ord. 87870 § 8.01.100 as amended by Ord. 88339; June 29, 1959).

8.01.110 Fire prevention code advisory board. The Fire Prevention Code Advisory Board, as created by Resolution No. 17432, shall examine administrative rulings of the Fire Chief relating to this Title and make recommendations, but it shall act in an advisory capacity only. (Ord. 87870 § 8.01.110; January 19, 1959).

8.01.120 DEFINITIONS. Unless otherwise expressly stated, the following terms shall, for the purpose of this Title, have the meanings indicated in this section. See the Building Code for additional definitions.

"APPROVED" means accepted by the Fire Chief as a result of investigation and experience or by reason of test, listing or approval by Underwriters' Laboratories, Inc., the National Bureau of Standards, the American Gas Association Laboratories or other nationally recognized testing agencies and the standards provided herein.

"AUTOMATIC FIRE ALARM SYSTEM" means a system which automatically detects a fire condition and actuates a fire alarm signal device.

"DWELLING" means a building occupied exclusively for residence purposes and having not more than two (2) dwelling units or as a boarding or rooming house serving not more than fifteen (15) persons with meals or sleeping accommodations or both.

"DWELLING UNIT" means one (1) or more rooms arranged for the use of one (1) or more individuals living together as a single housekeeping unit, with cooking, living, sanitary and sleeping facilities.

"FIRE CHIEF" means the head of the Fire Department and his authorized representatives.

"FIRE RESISTANCE RATING" means the time in hours that the material or construction will withstand the standard fire exposure as determined by a fire test made in conformity with the "Standard Methods of Fire Tests of Building Construction and Materials" of the American Society for Testing Materials ASTM E119 (C.F. 236287).

"HIGH HAZARD OCCUPANCY" means the occupancy or use of a building or structure or any portion thereof that involves highly combustible, highly flammable, or explosive

material, or which has inherent characteristics that constitute a special fire hazard.

"I. C. C. CONTAINER" means any container approved by the Interstate Commerce Commission for shipping any liquid, gaseous or solid material of a flammable, toxic or other hazardous nature.

"INDUSTRIAL OCCUPANCY" means the occupancy or use of a building or structure or any portion thereof for as-
[fol. 8] sembling, fabricating, finishing, manufacturing, packaging or processing operations, except when classed as a high hazard occupancy.

"INSTITUTIONAL OCCUPANCY" means the occupancy or use of a building or structure or any portion thereof by persons harbored or detained to receive medical, charitable or other care or treatment, or by persons involuntarily detained.

"MERCANTILE OCCUPANCY" means the occupancy or use of a building or structure or any portion thereof for the displaying, selling or buying of goods, wares or merchandise, except when classed as a high hazard occupancy.

"MULTIFAMILY HOUSE" means a building or portion thereof containing three (3) or more dwelling units, including tenement house, apartment house, flat.

"OWNER" means any person having title to, or control as guardian or trustee, of a building or property.

"PERSON" means one (1) or more natural persons of either sex, association, co-partnership or corporation, whether acting by themselves or by a servant, agent or employee; the singular number includes the plural, and the masculine pronoun includes the feminine.

"RESIDENTIAL OCCUPANCY" means the occupancy or use of a building or structure or any portion thereof by persons for whom sleeping accommodations are pro-

vided but who are not harbored or detained to receive medical, charitable or other care or treatment, or are not involuntarily detained.

"STORAGE OCCUPANCY" means the occupancy or use of a building or structure or any portion thereof, for the storage of goods, wares, merchandise, raw materials, agricultural or manufactured products, including parking garages, or the sheltering of livestock and other animals, except when classed as a high hazard occupancy. (Ord. 87870 § 8.01.120; January 19, 1959).

8.01.130 REPEALER—SAVING. Ordinance 59867 designated "The Fire and Explosion Hazard Ordinance" of the City of Seattle and all amendments thereto and all other ordinances or parts thereof in conflict herewith are hereby repealed; provided, that such repeal shall not be construed as affecting the application of such ordinances to violations thereof prior to the effective date of this ordinance, and such violations shall be punishable according to the provisions of the ordinance in effect on the date such violations existed or were commenced, as if this ordinance had not been enacted. (Ord. 87870 § 8.28.010; January 19, 1959).

8.01.140 PENALTY. Anyone violating or failing to comply with any provision of this Title or lawful order of the Fire Chief pursuant hereto shall upon conviction thereof be [fol. 9] punishable by a fine not to exceed Three Hundred Dollars ($300.00), or imprisonment in the City Jail for a period not to exceed ninety (90) days, or by both such fine and imprisonment, and each day of violation shall constitute a separate offense. (Ord. 87870 § 8.28.020; January 19, 1959).

Chapter 8.02
TIRE REBUILDING PLANTS

Sections:

8.02.010 Permit required.

8.02.020 Construction and protection requirements.

8.02.030 Dust collecting system.

8.02.040 Flammable liquid application.

8.02.010 Permit required. A permit shall be required to conduct or maintain any tire recapping or rebuilding plant. (Ord. 87870 § 8.02.010; January 19, 1959).

8.02.020 Construction and protection requirements. Tire rebuilding plants shall conform to all the requirements in the Building Code for Group E, Division 3 occupancies, except that an approved automatic sprinkler system with water flow alarm equipment shall be installed where the area exceeds fifteen hundred square feet (1,500 sq. ft.). (Ord. 87870 § 8.02.020; January 19, 1959).

8.02.030 Dust collecting system. Buffing machines shall be located in a room separated from the remainder of the plant by construction having a fire-resistance rating of not less than one-hour, with each door opening protected by an approved self-closing fire door. Each machine shall be connected to an approved dust collecting system discharging to an approved container which shall be cleaned at frequent intervals. (Ord. 87870 § 8.02.030; January 19, 1959).

8.02.040 Flammable liquid application. The process of treating buffed tire carcasses with a sprayed mixture of rubber cement and thinner shall be conducted in a room or booth as required in Chapter 8.14 of this Code for the application of flammable finishes. (Ord. 87870 § 8.02.040; January 19, 1959).

CHAPTER 8.03

WRECKING YARDS, JUNK YARDS AND WASTE MATERIAL HANDLING PLANTS

SECTIONS:

8.03.010 Permit required.

8.03.020 Location.

8.03.040 Construction and protection requirements for picking rooms.

[fol. 10]

EXHIBIT 2 TO AGREED STATEMENT OF FACTS

[Stamp—Filed—1964 Mar 24 AM 11 14—Walter W. Renschler, Clerk King County Wash.]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

No. 38779

CITY OF SEATTLE,

Plaintiff,

—vs.—

NORMAN E. SEE,

Defendant.

JUDGMENT

THIS MATTER having come on regularly for trial before the undersigned Judge in open court, the defendant having appeared in person and with counsel, Andrew Curtis, Jr. of Abbott and Curtis, the plaintiff having appeared by its Deputy Corporation Counsel, William Parker, the matter

having proceeded to trial upon stipulation and upon argument of counsel, the Court heretofore having entered its Findings of Fact and Conclusions of Law, and being otherwise fully advised, now, therefore,

IT IS HEREBY ORDERED AND ADJUDGED that defendant, NORMAN E. SEE, is in violation of City of Seattle Ordinance No. 87870, Section 8.01.050, and in accordance with Section 8.01.040, a sentence is hereby passed and adjudged against said defendant in the amount of a fine in the sum of $100.00 suspended. It is further

ORDERED that the defendant be and he hereby is ordered to pay all costs incurred herein.

DONE IN OPEN COURT this 24 day of March, 1964.

/s/ HENRY W. CRAMER
JUDGE

Presented by

/s/ ANDREW CURTIS, JR.
of Abbott & Curtis
Attorneys for Defendant

Approved for Entry:

/s/ WM. L. PARKER
of Corporation Counsel

Commitment issued 4/1/64 (returned) Appealed.

Cert. copies of Judgment, Notice of Appeal and Appearance Docket entry mailed to the Clerk of the Supreme Court,—April 15, 1964.

[fol. 11]

EXHIBIT 3 TO AGREED STATEMENT OF FACTS

[Stamp—Filed—1964 Mar 24 AM 11 14—Walter W. Renschler, Clerk King County Wash.]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

No. 38779

CITY OF SEATTLE,

Plaintiff,

—vs.—

NORMAN E. SEE,

Defendant.

NOTICE OF APPEAL

Comes now NORMAN E. SEE, whose address is 4327 Fremont Avenue, Seattle, Washington, the above-named defendant, through his counsel, Andrew Curtis, Jr. of Abbott and Curtis, attorneys, and hereby gives notice of appeal by said defendant from the judgment entered in the above entitled matter. The offense for which defendant was charged was defendant's refusal to allow an inspection of certain premises belonging to the defendant, by the Fire Department of the City of Seattle. The offense was based on City of Seattle Ordinance No. 87870 relating to fire inspections and related matters. Judgment was entered by the Court on the 24 day of March, 1964, adjudging said defendant in violation of said Ordinance and imposing a

suspended fine in the amount of $100.00. This appeal is taken from each and every part of said judgment.

Dated this 13 day of April, 1964.

ABBOTT & CURTIS
Attorneys for Defendant-Appellant

by /s/ ANDREW CURTIS, JR.
420 N. E. Ravenna Blvd.
Seattle 15, Washington

Received: 11/13/64
/s/ W. L. PARKER

Cert. copies of Judgment, Notice of Appeal and Appearance Docket entry mailed to the Clerk of the Supreme Court,—April 15, 1964.

[fol. 12]

ATTACHMENT TO AGREED STATEMENT OF FACTS

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY
No. 38779

CITY OF SEATTLE,
Plaintiff,

—vs.—

NORMAN E. SEE,
Defendant.

CERTIFICATION OF STATEMENT OF FACTS

I, Henry W. Cramer, Judge of the Superior Court of the State of Washington, in and for King County, and Judge before whom the foregoing matter was heard.

Do Hereby Certify that the matters and proceedings contained in the foregoing Statement of Facts are matters and proceedings occurring in said cause, and the same are hereby made a part of the record therein, and

I Do Further Certify that the same contains such of the material facts, matters and proceedings heretofore occurring in the cause as the parties have agreed, and are all that are material therein.

Done in Open Court This 26 day of June, 1964.

/s/ Henry W. Cramer

[Stamps—Ent'd.—Filed—in County Clerk's Office—King County, Washington—Jun 26 1964—Walter W. Renschler, Clerk, By Leonard A. Wolfe, Deputy.]

[fol. 13]

In the Supreme Court of the State of Washington

No. 37651

Department Two

The City of Seattle, Respondent,

v.

Norman E. See, Appellant.

Opinion—November 24, 1965

Barnett, J.*—This case involves the fire code of the city of Seattle and is before the court upon stipulated facts. The defendant is the owner of a warehouse located in

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* Judge Barnett is serving as a judge pro tempore of the Supreme Court pursuant to Const. art. 4, § 2(a) (amendment 38).

Seattle. The warehouse is maintained as locked premises and is inaccessible to anyone except the defendant.

On or about February 14, 1963, the Seattle fire department, through its authorized representative, demanded of the defendant that an inspection be allowed as to the locked premises. The fire department did not procure a search warrant nor present such to the defendant, and no claim was made that the fire department *had any reasonable cause to believe a violation of the ordinance existed at the* [fol. 14] *time of the demand.* The defendant refused to allow the fire department to make the inspection.

Action was brought by the city against defendant by reason of the latter's refusal to submit to the fire inspection. A jury was waived and the case was tried on the stipulated facts in the Superior Court of King County. Defendant was found guilty and fined by the court $100 suspended.

Pertinent sections of the Fire Code, Seattle Ordinance 87870, follow:

Section 8.01.010:

> Intent. This Title, referred to as the Fire Code, prescribes minimum standards for the safeguarding of life and property from the hazards of fire and explosion arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the use or occupancy of buildings or premises. Hazards which are governed by specific reference shall also be subject to all other applicable provisions of this Title. . . .

Section 8.01.050:

> Inspection of building and premises. It shall be the duty of the Fire Chief to inspect and he may enter all buildings and premises, *except the interiors of dwellings,* as often as may be necessary for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire, or any violations of the provisions of this Title, and of any other ordinance concerning fire hazards. : . . (Italics ours.)

Section 8.01.120:

Definitions. . . . "DWELLING" means a building occupied exclusively for residence purposes and having not more than two (2) dwelling units or as a boarding or rooming house serving not more than fifteen (15) persons with meals or sleeping accommodations or both.

Section 8.01.140:

Penalty. Anyone violating or failing to comply with [fol. 15] any provision of this Title or lawful order of the Fire Chief pursuant hereto shall upon conviction thereof be punishable by a fine not to exceed Three Hundred Dollars ($300.00) or imprisonment in the City Jail for a period not to exceed ninety (90) days, or by both such fine and imprisonment, and each day of violation shall constitute a separate offense. . . .

We are dealing here with a warehouse and business premises. It will be noted that § 8.01.050 specifically excepts the interiors of dwellings and consequently the same may not be inspected against the owner's will without a warrant. It should also be noted that we are not concerned here with the seizure of evidence for use in court and there is no threat of a criminal penalty even if a fire hazard were detected. Under the sections of the ordinance noted above, the fire chief is made responsible for enforcing the code.

It is first contended that § 8.01.050 is not sufficiently clear in statement and meaning to, in fact, give authority to the fire chief to enter all buildings and premises without any showing of reasonable or probable cause. We disagree.

The above is clear and unambiguous. It gives authority to the fire chief or his representative to enter commercial premises for purposes of inspection without any showing of reasonable or probable cause. No provision is made for securing a search warrant. A suspicion of violation of the ordinance is not a precondition to the inspection under the ordinance. Nor can it be suggested that the city exceeded its authority by the adoption of this ordinance. The en-

actment of reasonable ordinances regulating the inspection of buildings for fire hazards and procedures for forced elimination of fire hazards is within the police power of a [fol. 16] municipality. *Everett* v. *Unsworth*, 54 Wn.2d 760, 344 P.2d 728 (1959).

Since a search warrant is not required, we are immediately confronted with the question whether the ordinance is in violation of U. S. Const. Fourth Amendment and Const. art. 1, § 7.

The Fourth Amendment reads as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Const. art. 1, § 7 states:

> No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

The above provisions in the United States and State Constitutions, although they vary slightly in language, are identical in purpose and substance. *State* v. *Miles*, 29 Wn. 2d 921, 190 P.2d 740 (1948). It is only unreasonable searches and seizures, made without probable cause, that are forbidden. *State* v. *Thomas*, 183 Wash. 643, 49 P.2d 28 (1935).

In deciding the precise question, we recognize that the numerous federal and state cases including our own that were cited are not apposite. The cases usually involve the authority to inspect which attaches when some type of regulated activity is undertaken, e.g., engaging in certain types of business affected with a public interest and, hence, subject to the police power of the state. See Davis, Federal Searches and Seizures § 9.2; and 4 Wharton's Crimi-

[fol. 17] nal Law and Procedure (Anderson ed. 1957) § 1532; *State* v. *McFarland*, 60 Wash. 98, 110 Pac. 792 (1910), relating to the licensing and inspection of hotels; *Gange Lumber Co.* v. *Henneford*, 185 Wash. 180, 53 P.2d 743 (1936), requiring taxpayers to furnish information as to their capital, debts, earnings, etc.; *Kelleher* v. *Minshull*, 11 Wn.2d 380, 119 P.2d 302 (1941), authorizing access to the office and place of business of the individual and permitting an examination of the books, pertaining to the small loan business. These cases typify the sustained constitutionality of ordinances and statutes regarding inspection with which we have been concerned.

We are not here involved with a regulated activity giving rise to routine inspections. The question is whether a search without warrant, unjustified by suspicion of reasonable cause, is permitted.

Two cases recently decided by the Supreme Court of the United States are in point.

The first case is *Frank* v. *Maryland*, 359 U.S. 360, 3 L.Ed. 2d 877, 79 Sup. Ct. 804, argued March 5, 1959, and decided May 4, 1959. Therein it was held that the power to inspect dwelling places *either as a matter of systematic area-by-area search*, or to treat a specific problem of rat infestation is of indispensable importance to the maintenance of community health. The court stated that this power would be greatly hobbled by blanket requirement of safeguards [fol. 18] necessary for a search of evidence of criminal acts. It was held that the Baltimore ordinance providing that whenever the commissioner of health *shall have cause* to suspect that a nuisance exists in any house, cellar, or inclosure, he may demand entry therein in the daytime and if the owner or occupant shall refuse or delay to open the same and admit a free examination he shall forfeit and pay for every such refusal the sum of $20. Mr. Justice Frankfurter, speaking for the court, said, p. 366:

> The power of inspection granted by the Baltimore City Code is strictly limited, *more exacting than the analogous provisions of many other municipal codes.*

Valid grounds for suspicion of the existence of a nuisance must exist. Certainly the presence of a pile of filth in the back yard combined with the run-down condition of the house gave adequate grounds for such suspicion. The inspection must be made in the day time. Here was no midnight knock on the door, but an orderly visit in the middle of the afternoon with no suggestion that the hour was inconvenient. Moreover, the inspector has no power to force entry and did not attempt it. A fine is imposed for resistance, but officials are not authorized to break past the unwilling occupant.

. . . . .

The need to maintain basic, minimal standards of housing, to prevent the spread of disease and of that pervasive breakdown in the fiber of a people which is produced by slums and the absence of the barest essentials of civilized living, has mounted to a major concern of American government. The growth of cities, the crowding of populations, the increased awareness of the responsibility of the state for the living conditions of its citizens, all have combined to create problems of the enforcement of minimum standards of far greater magnitude than the writers of these ancient inspection laws ever dreamed. Time and experience have forcefully taught that the power to inspect dwelling places, *either as a matter of systematic area-by-area search* or, as here, to treat a specific problem, is of indispensable importance to the maintenance of community health; a power that would be greatly hobbled by the blanket requirement of the safeguards *necessary for a search of evidence of criminal acts.* The need for preventive action is great, and city after city has seen this need and granted the power of in- [fol. 19] spection to its health officials; and these inspections are apparently welcomed by all but an insignificant few. Certainly, the nature of our society has not vitiated the need for inspections first thought neces-

sary 158 years ago, nor has experience revealed any abuse or inroad on freedom in meeting this need by means that history and dominant public opinion have sanctioned.

That there is "a total unlikeness" between "official acts and proceedings," *Boyd* v. *United States,* 116 U. S. 616, 624, for which the legal protection of privacy requires a search warrant under the Fourteenth Amendment, and the situation now under consideration is laid bare by the suggestion that the kind of an inspection by a health official with which we are concerned may be satisfied by what is, in effect, a synthetic search warrant, an authorization "for periodic inspections." If a search warrant be constitutionally required, the requirement cannot be flexibly interpreted to dispense with the rigorous constitutional restrictions for its issue. A loose basis for granting a search warrant for the situation before us is to enter by way of the back door to a recognition of the fact that by reason of their intrinsic elements, their historic sanctions, and their safeguards, the Maryland proceedings requesting permission to make a search without intruding when permission is denied, do not offend the protection of the Fourteenth Amendment. (Italics ours.)

Frank establishes the proposition that reasonable administrative searches may be conducted without search warrants.

The other case is *Ohio ex rel. Eaton* v. *Price,* 360 U.S. 246, 3 L. Ed.2d 1200, 79 Sup. Ct. 978. That decision was appealed from the Ohio Supreme Court and decided June 8, 1959. The defendant owned and resided in a private residence in Dayton, Ohio. Three housing inspectors sought admittance to his home pursuant to a city ordinance which authorized them to enter any dwelling at a reasonable hour and upon showing proper identification for the purpose of inspecting the dwelling to determine if it conformed to the minimum standards of health and safety. The inspectors

gave no reason or cause for the particular inspection, but [fol. 20] merely told the defendant that they had a right to inspect any home.

Defendant was subsequently served with a warrant to appear in court for violation of the ordinance, which violation could result in a fine or imprisonment or both. As he was unable to provide bail, he was jailed. Eaton, an attorney, filed a petition for a writ of habeas corpus in the state court of common pleas against the chief of police. That court found the ordinance unconstitutional. It was reversed by the Ohio Court of Appeals.

The Ohio Court of Appeals (Montgomery County) in November, 1957, in *State ex rel. Eaton* v. *Price,* 105 Ohio App. 376, 152 N.E.2d 776, affirmed 168 Ohio St. 123, 151 N.E.2d 523 (1958), held that an ordinance which establishes minimum standards for dwellings, authorizes a housing inspector "to enter, examine and survey at any reasonable hour" same, and which provides penalties for violation thereof, was not arbitrary, discriminatory, or unreasonable. The Ohio court said that it is a valid exercise of the police power and that the inspection contemplated by such ordinance is not violative of the Ohio Constitution prohibiting "unreasonable searches." The court said, p. 391:

> After giving due consideration to the rulings in the cited cases and the applicable principles of law, we are of the opinion that in the instant case the inspection is a routine matter; it is to be made during reasonable hours and is primarily for protective and not punitive purposes, and is in the interest of the general welfare. The inspection contemplated by the ordinance is not an "unreasonable search" within the meaning of the provision prohibiting "unreasonable searches and seizures" . . . .

On appeal to the United States Supreme Court, the decision of the Ohio court was affirmed by an equally divided [fol. 21] court. The court stated that the facts in *Eaton* were similar to those in *Frank* and that it would be a mani-

festation of disrespect to allow the *Frank* case to be overruled so shortly after it was decided.[1]

Although, in affirming *Eaton*, the first group of justices stated that the facts in *Eaton* are similar to those in *Frank*, it should be noted that *Frank* held valid an ordinance authorizing a search by a health inspector without a warrant, if there were reasonable grounds for believing the house was below the minimum standards of health and safety. The ordinance in *Eaton* did not provide for any grounds or reasons for a search and, thus, would permit systematic area-by-area inspection, whereas, in *Frank*, it permitted inspection to treat a specific problem. We are reminded that Mr. Justice Frankfurter stated in *Frank* that area-by-area inspections are indispensable.

The above cases deal with a man's castle—his home. In the instant case, we are concerned with a warehouse and business property. The ordinance in question excepts the "interior of dwellings."

This case does not involve the search of evidence for criminal acts, but even the safeguards necessary for *such* evidence are not so stringent with reference to premises other than a man's home or dwelling.

In Davis, Federal Searches and Seizures § 1.31, p. 8, it was observed:

> [fol. 22] The requirements of the Fourth Amendment receive their strictest application when a dwelling house is involved in a search. This fact is based on the traditional concept of the sanctity of the home and the peaceful enjoyment of its privacy. . . .

The United States Supreme Court has applied different standards of reasonableness to searches of dwellings than to places of business. *Davis* v. *United States*, 328 U.S. 582 (1946), 90 L. Ed. 1453, 66 Sup. Ct. 1256. The lower federal

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[1] Mr. Justice Stewart declined to sit on the case because his father was serving on the Supreme Court of Ohio when the case came before the court.

courts also reflect this attitude: "We realize, of course, that the fact that the premises are a residence requires stricter requirements of reasonableness." *Smith* v. *United States,* 254 F.2d 751 (1958), *cert. denied* 357 U.S. 937, 2 L. Ed.2d 1552, 78 Sup. Ct. 1388. "It seems to be generally agreed that the Amendment applies most importantly to searches of dwelling houses . . . ." *United States* v. *Turner,* 126 F. Supp. 349 (1954). "What may be unreasonable in a search of a man's house, may be entirely reasonable in a search of his place of business." *Giacona* v. *United States,* 257 F.2d 450 (1958), *cert. denied* 358 U.S. 873, 3 L. Ed.2d 104, 79 Sup. Ct. 113.

The dissenting opinion in *Frank, supra,* deals primarily with the homeowner. It is there stated, p. 374:

> The decision today greatly dilutes the right of privacy which every homeowner had the right to believe was part of our American heritage. . . .
>
> The question in this case is whether a search warrant is needed to enter a citizen's home to investigate sanitary conditions. The Court holds that no search warrant is needed, that a knock on the door is all that is required, that for failure of the citizen to open the door he can be punished. . . .

[fol. 23] It is reasonable to believe that even the minority in *Frank* and *Eaton* would reach a different conclusion and apply different standards of reasonableness to a fact pattern such as that in the case at bar. A home is not involved in the instant case. A related issue is the knowledge gained by the inspection for possible use in any subsequent criminal cases. That is a question we do not pass upon at this time, since it is not before us. The ordinances in question authorize the fire chief to "enter all buildings and premises except the interior of dwellings as often as may be necessary" for finding and correcting any conditions liable to cause fires. No criminal charge is to be made upon discovery of a fire hazard. The code provides instead that whenever the fire chief finds in any building or upon any

premises dangerous or hazardous conditions he "shall order such dangerous conditions or material to be removed or remedied in such manner as may be specified." An "order for correction" is then served upon the owner or occupant of the premises. But it should be noted that an inspection in the present case was only for discovery of fire hazards. No evidence would be seized for use in court and there was no threat of criminal penalty even if fire hazards were detected.

Section 8.01.010 of the fire code, *supra,* prescribes minimum standards for the safeguarding of life and property in the use and occupancy of buildings other than dwellings. The purpose of the fire code inspections is to correct conditions hazardous to life and property. The problem of keep-
[fol. 24] ing cities and their inhabitants free from explosions and fires is a serious task facing all fire departments. It is obvious that routine inspections are necessary to insure the safeguarding of life and property. The need to conduct routine inspections of commercial premises, in regard to which probable cause for the issuance of a warrant could not ordinarily be established, outweighs the interest in privacy with respect to such premises. The purpose of the inspection contemplated by the code is not unreasonable.

There is no accepted yardstick for measuring the reasonableness of a search. What is reasonable is not determined by any fixed formula. The recurring questions of reasonableness of searches must find solution in the facts and circumstances of each case. This means the decided cases provide the only guidelines for determining the reasonableness of a search. See Davis, Federal Searches and Seizures; *United States* v. *Rabinowitz,* 339 U.S. 56 (1950), 94 L. Ed. 653, 70 Sup. Ct. 430.

In the light of *Frank* and *Eaton, supra,* we hold that the sanctions of U. S. Const. Fourth Amendment and Const. art. 1, § 7, have not been violated by the provisions of the Seattle Fire Code as herein set out.

Finally, it is urged by appellant that the ordinance is unconstitutional because it violates the equal protection clause of the U. S. Const. Fourteenth Amendment, and the privileges and immunities clause, Const. art. 1, § 12, as well. These violations, it is contended, are the result of the "arbitrary and unreasonable" classification of all build-
[fol. 24a] ings into those having not more than two dwelling units and serving not more than 15 persons and that of every other type of building.

The guarantee of equal protection of the laws and the prohibition of special privileges and immunities require that class legislation apply alike to all persons within a class, and reasonable ground must exist for making a distinction between those within and those without a specified class. *Clark* v. *Dwyer,* 56 Wn.2d 425, 353 P.2d 941 (1960). "The prohibition of the Equal Protection Clause goes no further than the invidious discrimination." *Williamson* v. *Lee Optical of Oklahoma, Inc.,* 348 U.S. 483, 489 (1955), 99 L. Ed. 563, 75 Sup. Ct. 461. Appellant does not suggest that that point has been reached in this case. The United States Supreme Court has, on another occasion, stated, "Equal protection does not require identity of treatment." *Walters* v. *City of St. Louis,* 347 U.S. 231, 237 (1954), 98 L. Ed. 660, 74 Sup. Ct. 505. The very act of classification involves some degree of discrimination. Equal protection "only requires that classification rest on real and not feigned differences, that the distinction have some relevance to the purpose for which the classification is made, and that the different treatments be not so disparate, relative to the difference in classification, as to be wholly arbitrary." *Walters, supra.* There is remaining a wide area of legislative discretion.

We held in *State* v. *McFarland,* 60 Wash. 98, 110 Pac. 792 (1910), that a statute providing for the inspection of inns and hotels having 10 or more rooms was not an un-
[fol. 25] reasonable classification and did not violate either state or federal constitution. There is not a great deal of distinction between *McFarland* and the case at bar.

"A statutory enactment cannot be successfully attacked unless the discrimination or inequality produced by the particular classification is manifestly arbitrary, unreasonable, inequitable and unjust. . . ." *State* v. *Persinger*, 62 Wn.2d 362, 368, 382 P.2d 497 (1963). Such has not been shown to be the circumstances in the instant case.

Judgment affirmed.

Barnett, J. Pro tem.

I concur in the results.

Rosellini, C. J.

We Concur:

Finley, J., Weaver, J., Hamilton, J.

[fol. 26]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 37651

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—January 19, 1966

The Court having considered the appellant's petition for a rehearing herein,

It Is Ordered that the petition be and it is hereby denied.

Dated this 19th day of January, 1966.

By the Court:

Hugh J. Rosellini, Chief Justice.

67 W.D.2d 465

[fol. 27]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 37651

King County No. 38779

THE CITY OF SEATTLE, Respondent,

v.

NORMAN E. SEE, Appellant.

REMITTITUR—January 19, 1966

This is to certify that the opinion of the Supreme Court of the State of Washington filed on November 24, 1965, became the final judgment of this court in the above entitled case on January 19, 1966. This cause is remitted to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule 55 on Appeal, costs are taxed as follows:

Three Hundred Thirty-one and 07/100 ($331.07) Dollars in favor of respondent and against appellant.

The Petition for Rehearing was Denied by an Order filed January 19, 1966.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 19th day of January, A.D. 1966.

William M. Lowry, Clerk of the Supreme Court, State of Washington.

cc: Court Reporter, Abbott & Curtis, Mr. Andrew Curtis, Jr., Hon. A. L. Newbould, Mr. Jerry F. King, Mr. Jorgen G. Bader, American Civil Liberties Union, Mr. Paul D. Jackson.

[fol. 28]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 37651

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed April 8, 1966

I.

Notice is hereby given that Norman E. See, the appellant above named, hereby appeals to the Supreme Court of the United States from the final Order of the Supreme Court of the State of Washington, entered January 19, 1966, upon Denial of Petition for Rehearing, affirming the judgment of conviction of the Superior Court of the State of Washington for King County, Cause No. 38779, dated March 24, 1964, finding appellant in violation of Section 8.01.050 of City of Seattle Ordinance No. 87870, referred to as the Fire Code.

This appeal is taken pursuant to 28 U.S.C. 1257 (2).

Appellant was convicted of the crime of refusing to allow the Fire Department of the City of Seattle to search (inspect) appellant's private warehouse premises without a search warrant, for the purpose of ascertaining whether or not conditions liable to cause fire, or any violations of the Fire Code, or any other Ordinance concerning fire hazards, were present, absent any suspicion or reasonable cause to believe that such conditions or violations existed. City of Seattle Ordinance No. 87870, Sections 8.01.050, 8.01.140. Appellant was sentenced to pay a fine of $100.00 suspended and all costs incurred. Appellant is now at large on bail.

II.

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme

[File endorsement omitted]

[fol. 29] Court of the United States, and include in said transcript the following:

1. Letter of appellant See to Fire Department, dated February 13, 1963.

2. Criminal Complaint.

3. Copy of Seattle City Ordinance Chapter 8.01.

4. Counsel's Stipulation as to facts, dated March 9, 1964.

5. Findings of Fact and Conclusions of Law of the King County Superior Court in case no. 38779, dated March 24, 1964.

6. Judgment of the Superior Court of King County, dated March 24, 1964.

7. Notice of Appeal to the Supreme Court of the State of Washington, dated April 13, 1964.

8. Decision of the Supreme Court of the State of Washington, dated November 24, 1965, in case no. 37651.

9. Remittitur.

III.

The following questions are presented by this appeal:

1. Is the Ordinance of the City of Seattle (Transcript document no. 3), invalid because repugnant to Amendment IV of the Federal Constitution, as invoked by the Due Process Clause of the Fourteenth Amendment, since it authorizes search of private premises, without search warrant, absent suspicion or any reasonable cause to believe that violations of the Ordinance or conditions liable to cause fire, exist, and without restriction as to time or number of such searches?

2. Was the conviction and sentencing of appellant under the aforesaid Ordinance of the City of Seattle, similarly invalid?

3. Should Frank vs. Maryland, 359 US 360, 3 L.Ed.(2d) 877, 79 S.Ct. 804 (1959) be overruled?

Paul D. Jackson of Hatch & Jackson, Counsel for Norman E. See, Appellant, 500 Central Building, Seattle, Washington 98104.

[fol. 30] Proof of Service (omitted in printing).

[fol. 31] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 32]

SUPREME COURT OF THE UNITED STATES

No. 180—October Term, 1966

NORMAN SEE, Appellant,

v.

CITY OF SEATTLE.

Appeal from the Supreme Court of the State of Washington.

ORDER NOTING PROBABLE JURISDICTION—October 10, 1966

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is placed on the summary calendar and set for oral argument immediately following No. 92.